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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC, No. 3:20-cv-
05671-JD

Case No. 3:21-md-02981-JD

**DECLARATION OF SHANE M.
PALMER IN SUPPORT OF NON-
PARTY SPOTIFY'S
ADMINISTRATIVE MOTION TO
SEAL PORTIONS OF THE
DEPOSITION OF SANDRA
ALZETTA AND EXHIBITS
THERE TO**

Judge: Hon. James Donato

1 I, Shane M. Palmer, declare as follows:

2 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel
3 to Non-Party Spotify USA Inc. (“Spotify”). I am a member in good standing of the Bars of the
4 States of New York and California and a member of the Bar of this Court. I submit this declaration
5 pursuant to Local Civil Rule 79-5(c)(2) in support of Spotify’s Administrative Motion to Seal
6 Portions of the Deposition of Sandra Alzetta and Exhibits Thereto in *In re Google Play Store*
7 *Antitrust Litigation*, No. 3:21-md-02981-JD (the “Action”). I have personal knowledge of the
8 facts set forth in this declaration and can testify competently to those facts.

9 2. On September 29, 2022, Spotify employee Sandra Alzetta was deposed in
10 this Action (the “Alzetta Deposition”).

11 3. On November 6, 2023, counsel for Epic Games, Inc. (“Epic”) sent me an
12 email stating that it was “possible that Ms. Alzetta’s testimony will be played on November 9,
13 2023,” attaching the “full set of deposition testimony that has been designated by the parties,” and
14 noting that “[n]ot all of this testimony will necessarily be played.”

15 4. At 8:46 p.m. PT that same day, counsel for Google LLC (“Google”) sent
16 me an email attaching Google’s designations from the Alzetta Deposition and “providing notice
17 that Exhibit 2062 (SPOT-GOOGLE-00000014) . . . is encompassed by Google’s designations and
18 will thus be displayed in open court when the designations are played.” That email also indicated
19 that Google understood that Epic intended to play designations from the Alzetta Deposition at trial
20 on November 8, 2023.

21 5. After receiving Google counsel’s email, I spoke with counsel for Epic by
22 telephone, and Epic confirmed that testimony from the Alzetta Deposition may be played on
23 November 8, 2023. At 9:45 p.m. PT on November 6, 2023, counsel for Epic sent me an email
24 containing the “narrowed designations for both parties” and indicating that the parties intended to
25 introduce “Exhibit 1532” and “Exhibit 2062” into evidence.

26 6. At 1:13 p.m. PT on November 7, 2023, pursuant to an oral instruction by
27 the Court on the morning of November 7 that third parties should work with Epic and Google
28 (collectively, the “Parties”) regarding the use of their confidential information at trial, I sent an

1 email to counsel for the Parties explaining that Spotify believes certain information contained in
2 the Parties' designations from the Alzetta Deposition, and within Exhibits 1532 and PX 2062
3 (collectively, the "Exhibits"), reflects trade secrets that are properly sealable. In an effort to avoid
4 the need to file a motion to seal the courtroom during presentation to the jury of these portions of
5 the Alzetta Deposition and discussion of the Exhibits, I requested that the Parties (i) agree to
6 withdraw their designations of certain passages from the Alzetta Deposition that contain Spotify's
7 confidential information; and (ii) agree, to the extent the Parties seek to introduce the Exhibits into
8 evidence, that counsel will publish those exhibits to the jury alone, and not display them to the
9 gallery, and that counsel and witnesses will direct the jury's attention to information in these
10 exhibits rather than stating any information contained in these exhibits in their questioning or
11 testimony.

12 7. At 3:30 p.m. PT on November 7, 2023, I attended a call with counsel for
13 Google to discuss Spotify's request concerning treatment of its confidential materials at trial. On
14 the call, counsel for Google stated that Google does not oppose Spotify's request concerning the
15 treatment of the Exhibits, but that Google could not agree to withdraw all of its designations from
16 the Alzetta Deposition within the scope of Spotify's request at that time, and that it would need
17 additional time to consider the request.

18 8. At approximately 4:00 p.m. PT on November 7, 2023, I attended a joint call
19 with counsel for the Parties to discuss Spotify's request. Counsel for Epic informed me that Epic
20 would need additional time to consider Spotify's request, and that Epic would endeavor to provide
21 a response as soon as possible. Counsel for Epic also informed me that the testimony from the
22 Alzetta deposition would not be played on November 8, but that Exhibit 1532 would be introduced
23 on November 8 in connection with the testimony of another witness. I informed the parties that
24 Spotify was going to file its Motion by the 5:00 p.m. PT filing deadline in an abundance of caution,
25 but agreed to continue to discuss Spotify's request regarding the treatment of the Alzetta
26 Deposition and PX 2062 to the extent that those materials are not used at trial on November 8.

27 9. As of the time of filing, I did not receive any further communications from
28 counsel for the Parties.

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct. Executed this November 7, 2023 in Brooklyn, New York.

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4 /s/ Shane M. Palmer
5 Shane M. Palmer
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